

ASSEMBLY BILL

No. 842

Introduced by Assembly Member Vargas

February 20, 2003

An act to amend Sections 11018.8, 11018.9, and 11024 of, and to add Section 11003.6 to, the Business and Professions Code, and to amend Sections 1689.5 and 1689.24 of the Civil Code, relating to time-share estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 842, as introduced, Vargas. Time-share estates.

(1) Existing law provides that a person who has made an offer to purchase a time-share estate or time-share use in a time-share project, as defined, has the right to rescind a contract resulting from the acceptance of the offer until midnight of the 3rd calendar day, as specified.

This bill would provide that a person has the right to rescind a time-share estate, time-share use, incidental benefit, or any right under an exchange program, until midnight of the 7th calendar day, and make related rescission and notice provisions applicable thereto, as specified.

This bill would define “short-term product” to mean a right to use structural overnight dwelling accommodations on a one-time or recurring basis for any period that does not exceed 30 days for each stay and for a term of less than 5 years. The bill would provide that a person has the right to rescind a contract to purchase a short-term product, until midnight of the 7th calendar day, as specified. The bill would also require the seller of a short-term product to conspicuously disclose to any purchaser the right to rescind, and to place any purchase money into an independent escrow depository, a bond, or make an alternative

arrangement, as specified, to secure the right of the purchaser to rescind. The bill would provide a cause of action for a violation of these provisions, and permit recovery of damages and reasonable attorneys' fees and costs.

(2) Existing law regulates the content and effect of home solicitation contracts or offers, as defined, and seminar sales solicitation contracts or offers, as defined. Existing law defines goods and services for the purposes of these provisions, excepting from these definitions specified items and activities.

This bill would except from the definition of home solicitation contract or offer and seminar sales solicitation contract or offer, and from their respective definitions of goods and services, a contract or offer to purchase a time-share estate or a time-share use in a time-share project, as defined, if certain conditions apply, as specified, and any goods or services that are offered as part of, or incidental to, a time-share estate or a time-share use in a time-share project, including, an exchange program or incidental benefit, as defined, if certain conditions apply, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11003.6 is added to the Business and
2 Professions Code, to read:

3 11003.6. (a) (1) A "short-term product" is a right to use
4 structural overnight dwelling accommodations on a one-time or
5 recurring basis for a period or periods not to exceed 30 days for
6 each stay and for a term of less than five years.

7 (2) A contract to purchase a short-term product is subject to this
8 section if it does the following:

9 (A) Includes an agreement that all or a portion of the
10 consideration paid by a person for the short-term product will be
11 applied to or credited against the price of a future purchase of a
12 timeshare estate or time-share use in a time-share project, as
13 defined in Sections 11003.5 and 11004.5, or that the cost of a future
14 purchase of a time-share interest will be fixed or locked in at a
15 specified price.

16 (B) Is executed by the person on the same day or within seven
17 calendar days after that person attends a sales presentation

1 regarding the offering of a time-share estate or time-share use in
2 a time-share project.

3 (b) A person who has entered into a contract to purchase a
4 short-term product shall have the right to rescind the contract until
5 midnight of the seventh calendar day following the day on which
6 the contract is first made, and is entitled to the return of 100 percent
7 of the consideration paid under the contract, without deduction.

8 (c) A person who has entered into a contract to purchase a
9 short-term product also has the right to rescind the contract no later
10 than 15 days after the last day specified under the short-term
11 product program for making reservations, if the purchaser, after
12 following the procedures established by the seller for reserving the
13 use of the short-term product accommodations, and after making
14 three separate attempts to obtain a reservation, is unsuccessful in
15 obtaining a written confirmed reservation from the seller of the
16 short-term product accommodations for a use period. An
17 unsuccessful attempt to obtain a written confirmed reservation
18 does not include an attempt to obtain a reservation that is within
19 two weeks of New Year's Day, Washington's Birthday, Memorial
20 Day, Independence Day, Labor Day, Columbus Day, Veterans'
21 Day, Thanksgiving Day, or Christmas Day, or other holiday or
22 special event designated by the seller, and provided further that the
23 third attempt was made at least 90 days prior to the expiration of
24 the term of the short-term product.

25 (d) The seller of a short-term product shall clearly and
26 conspicuously disclose to all purchasers the right of rescission
27 provided for in subdivisions (b) and (c). The contract for the
28 purchase of a short-term product shall include the date of the
29 contract and shall contain, in immediate proximity to the space
30 reserved for the signature of the purchaser, a conspicuous
31 statement in a size equal to at least 10-point capitalized boldface
32 type, as follows:

33
34 "YOU HAVE THE RIGHT TO CANCEL THIS
35 CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF
36 THE SEVENTH CALENDAR DAY AFTER THE DATE
37 OF THIS CONTRACT FOR A FULL REFUND. YOU
38 ALSO HAVE THE RIGHT TO A REFUND IF YOU ARE
39 UNABLE, AFTER THREE ATTEMPTS DURING THE
40 TERM OF YOUR CONTRACT, TO OBTAIN A

1 CONFIRMED RESERVATION FOR THE USE OF THE
2 ACCOMMODATIONS SPECIFIED IN YOUR
3 CONTRACT AFTER FOLLOWING THE RESERVATION
4 RULES SPECIFIED OR REFERRED TO IN YOUR
5 CONTRACT. YOU MAY EXERCISE YOUR RIGHT TO
6 CANCEL BY TELEGRAPHIC COMMUNICATION,
7 MAIL, OR OTHER WRITTEN NOTICE TO THE
8 FOLLOWING ADDRESS: "SPECIFIC CONTACT
9 INFORMATION".

10
11
12 (e) A purchaser of a short-term product may exercise the right
13 of rescission provided for in subdivision (b) or (c) by giving
14 written notice to the owner of the short-term product as specified
15 in subdivision (d). The seller of the short-term product shall cause
16 any deposit given by a purchaser who has exercised the right to
17 rescind described in subdivision (b) or (c) to be returned to the
18 purchaser no later than the last to occur of 10 business days
19 following receipt of the purchaser's written notice of rescission, or
20 five business days following the date upon which any deposit
21 becomes good and immediately available funds.

22 (f) A seller of a short-term product shall do any of the following
23 to secure the seller's obligation to return the purchase money
24 funds:

25 (1) Place any purchase money funds received from the
26 purchaser of a short-term product into an independent escrow
27 depository acceptable to the commissioner until either the
28 seven-day period for rescission described in subdivision (b) has
29 expired and the purchaser has received a written confirmed
30 reservation from the seller for a use period as described in
31 subdivision (c), or the period for making the reservations has
32 expired pursuant to the short-term product contract, which date
33 may not be any earlier than 90 days prior to the expiration of the
34 term of the short-term product as described in subdivision (c).

35 (2) Post a bond to secure the return of the purchaser's purchase
36 money funds in a form and in an amount prescribed by the
37 commissioner.

38 (3) Make alternative arrangements satisfactory to the
39 commissioner.

(g) A purchaser may bring an action for recovery of actual damages or other equitable relief against the seller of a short-term product for a violation of this section. Upon finding a violation of this section, the court shall award rescission of the contract, if the purchaser pleads rescission. The court may also award any of the following:

(1) All damages actually suffered by a purchaser.

(2) Reasonable attorneys' fees and costs to the prevailing party.

(3) Other relief deemed appropriate to carry out the intent of this section.

SEC. 2. Section 11018.8 of the Business and Professions Code is amended to read:

11018.8. (a) Notwithstanding Section 11004.5 or 11018, or subdivisions (d) and (e) of Section 11018.5, an exchange program is not a part of a time-share project offering, except as provided in this section *or Section 11024*, and ~~shall~~ is not be subject to the provisions of this part nor to regulations of the commissioner adopted pursuant thereto.

(b) If a purchaser of an interest in a time-share project is offered the opportunity to become a member of an exchange program, the subdivider shall include with the application for a public report the following information:

(1) The name and address of the exchange company.

(2) A copy of the form of the contract between the purchaser and the exchange company.

(3) A copy of any materials ~~which~~ *that* will be used in promoting the exchange program.

(4) Whether the exchange company or any of its officers or directors have any legal or beneficial interest in any developer, seller, or managing entity for any time-share project participating in the exchange program and, if so, the identity of the time-share project and the nature of the interest.

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the applicable time-share project with the exchange program.

(6) A fair and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes to the contract may be made.

1 (7) A fair and accurate description of the procedures necessary
2 to qualify for and effectuate exchanges.

3 (8) Whether exchanges are arranged on a space-available basis
4 and whether any guarantees of fulfillment of specific requests for
5 exchanges are made by the exchange program.

6 (9) Whether and under what circumstances an owner of a
7 time-share interest, in dealing with the exchange program, may
8 lose the right to use and occupy an accommodation of the
9 time-share project during a reserved use period with respect to any
10 property applied for exchange without his or her being provided
11 with substitute accommodations by the exchange program.

12 (10) The standard fees for participation by owners in the
13 exchange program, a statement of whether any of those fees may
14 be altered by the exchange company, and the circumstances under
15 which alterations may be made.

16 (11) The name and address of the site of each accommodation
17 or facility included within any time-share project.

18 (12) Any other information as the subdivider ~~shall elect~~ *elects*
19 to include.

20 SEC. 3. Section 11018.9 of the Business and Professions
21 Code is amended to read:

22 11018.9. (a) Notwithstanding ~~anything to the contrary~~
23 ~~contained in~~ subdivision (g) of Section 11004.5, Section 11018,
24 and subdivisions (d) and (e) of Section 11018.5, an incidental
25 benefit is not a part of the offering, and except as provided in this
26 section ~~shall or Section 11024, is not be~~ subject to the provisions
27 of this part nor to regulations of the commissioner adopted
28 pursuant thereto.

29 (b) If a purchaser of an interest in a time-share project is offered
30 the opportunity to acquire an incidental benefit in connection with
31 a time-share interest, the subdivider shall include with the
32 application for a public report a description of each incidental
33 benefit, including the nature and amount of any user fees or costs
34 associated therewith, and, any restrictions upon use or availability.

35 (c) Incidental benefits may only be offered if:

36 (1) The continued availability of any incidental benefit for the
37 use and enjoyment of owners of time-share interests is not
38 necessary in order for any accommodation or facility ~~which that~~
39 is not an incidental benefit to be used, occupied, or enjoyed by the
40 owners in a manner consistent in all material respects with the plan

1 of use and enjoyment set forth in the time-share documents or
2 represented by or on behalf of the subdivider, in writing in a
3 purchaser's purchase contract, in the permit, or in any
4 advertisement or promotion, or otherwise.

5 (2) The use of or participation in the incidental benefit by an
6 owner of a time-share interest is completely voluntary, and
7 payment of any fee or other cost associated with the incidental
8 benefit is required only upon that use or participation.

9 (3) No costs of acquisition, operation, maintenance, or repair
10 of the incidental benefit are passed on to purchasers of time-share
11 interests in the time-share project as common expenses of the
12 time-share project.

13 (d) The commissioner may issue a disclosure statement
14 relating to any incidental benefits. A copy of the disclosure
15 statement of the commissioner, when issued, shall be given to the
16 prospective purchaser by the owner, subdivider, or agent prior to
17 the execution of a binding contract or agreement for the sale of any
18 interest in the time-share project.

19 SEC. 4. Section 11024 of the Business and Professions Code
20 is amended to read:

21 11024. (a) A person who has made an offer to purchase (1) a
22 time-share estate or time-share use in a time-share project, as
23 defined in Section 11003.5, (2) *any incidental benefit, made within*
24 *seven calendar days after the person attended a sales presentation*
25 *for a time-share estate or time-share use in a time-share project,*
26 *or (3) any right under an exchange program, made within seven*
27 *calendar days after the person attended a sales presentation or if*
28 *the total amount of the contract when divided by the number of*
29 *years of the contract exceeds two hundred fifty dollars (\$250),*
30 shall have the right to rescind any contract resulting from the
31 acceptance of the offer until midnight of the ~~third~~ *seventh* calendar
32 day following the day on which the prospective purchaser
33 executed the offer to purchase.

34 ~~(b) The owner of a subdivision, as defined in subdivision (c) of~~
35 ~~Section 11004. 5, or his or her agent, shall, in accordance with~~
36 ~~regulations adopted by the Real Estate Commissioner, clearly and~~
37 ~~conspicuously disclose to all prospective purchasers of time-share~~
38 ~~interests the right of rescission provided for in subdivision (a), and~~
39 ~~shall furnish to each offeror a form, as prescribed by regulations~~
40 ~~of the commissioner, for the exercise of the right of rescission.~~

1 ~~(e)~~ Upon receipt of a rescission notice from a purchaser as
2 specified in subdivision (a), the owner of a subdivision, as defined
3 in subdivision (e) of Section 11004.5, shall immediately notify the
4 owner of any incidental benefit program or exchange program
5 specified in subdivision (a), that the purchaser has exercised the
6 rescission rights specified in subdivision (a).

7 (c) Any notice by a purchaser of the exercise of the rescission
8 rights specified in subdivision (a) shall be in writing and shall be
9 effective upon transmission via fax, e-mail, or telegraph, or upon
10 deposit, first class postage prepaid, into the United States mail to
11 addresses that shall be specified in the contract, or alternatively
12 specified in a form set forth in a regulation adopted by the
13 commissioner.

14 (d) The owner of a subdivision, as defined in subdivision (e) of
15 Section 11004.5, or the owner of an incidental benefit or exchange
16 program specified in subdivision (a), if the owner of the
17 subdivision is not also the owner or the agent of the owner of the
18 incidental benefit or exchange program, shall:

19 (1) Cause any deposit for the time-share use or time-share
20 estate in a time-share project, incidental benefit, or exchange
21 program given by a purchaser who has exercised the right to
22 rescind described in subdivision (a), to be returned to the
23 purchaser no later than the last to occur of 10 business days
24 following receipt of the purchaser's written notice of rescission, or
25 five business days following the date upon which any deposit
26 becomes good and immediately available funds.

27 (2) In accordance with the regulations adopted by the
28 commissioner, clearly and conspicuously disclose to all
29 prospective purchasers of time-share interests the right of
30 rescission provided for in subdivision (a) and furnish to each
31 purchaser a form for the exercise of the right of rescission. The
32 offer to purchase described in subdivision (a) shall include the date
33 the purchaser executes the offer to purchase and shall contain, in
34 immediate proximity to the space reserved for the signature of the
35 purchaser, a conspicuous statement in a size equal to at least
36 10-point boldface type as follows:

37 "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
38 ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH
39 CALENDAR DAY AFTER THE DATE OF THIS CONTRACT.
40 SEE THE NOTICE OF RESCISSION RIGHTS FORM

1 ATTACHED TO THE FRONT PAGE OF THE CALIFORNIA
2 PUBLIC REPORT FOR AN EXPLANATION OF THIS RIGHT.”
3 “YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
4 ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH
5 CALENDAR DAY AFTER THE DATE OF THIS CONTRACT.
6 SEE THE NOTICE OF RESCISSION RIGHTS FORM
7 ATTACHED TO THIS CONTRACT FOR AN EXPLANATION OF
8 THIS RIGHT.”

9 (e) Nothing in subdivision (d) shall prevent the substitution of
10 a longer rescission period and notice thereof.

11 (f) No part of this section shall be construed to allow a
12 purchaser to waive his or her right of rescission before expiration
13 of the time set forth in subdivision (a).

14 (g) Any certificate bearing the signature of the purchaser of a
15 time-share estate or time-share use in a time-share project, as
16 defined in Section 11003.5, which contains an adequate
17 description of the interests sold and a statement by the purchaser
18 that he or she has not exercised the right of rescission within the
19 time limit set forth herein shall constitute conclusive evidence that
20 the right of rescission has not been exercised in any matter
21 involving the rights of a third party who has acted in good faith in
22 reliance upon representations in the certificate.

23 ~~(d)~~

24 (h) A purchaser may bring an action for recovery of actual
25 damages or other equitable relief against the owner of a
26 subdivision, as defined in subdivision (e) of Section 11004.5, or
27 his or her agent, for a violation of this section. Upon finding a
28 violation of this section, the court shall award rescission of the
29 contract, if the purchaser pleads rescission. The court may also
30 award:

31 (1) All damages actually suffered by a purchaser.

32 (2) Reasonable attorney’s fees and costs to the prevailing
33 purchaser.

34 (3) Other relief deemed appropriate to carry out the intent of
35 this section.

36 SEC. 5. Section 1689.5 of the Civil Code is amended to read:
37 1689.5. As used in Sections 1689.6 to 1689.11, inclusive, and
38 in Section 1689.14:

39 (a) “Home solicitation contract or offer” means any contract,
40 whether single or multiple, or any offer which is subject to

1 approval, for the sale, lease, or rental of goods or services or both,
2 made at other than appropriate trade premises in an amount of
3 twenty-five dollars (\$25) or more, including any interest or service
4 charges. “Home solicitation contract” does not include any
5 contract under which the buyer has the right to rescind pursuant to
6 Title 1, Chapter 2, Section 125 of the Federal Consumer Credit
7 Protection Act (P.L. 90-321) and the regulations promulgated
8 pursuant thereto, or any contract for repair services with a
9 contractor who is duly licensed pursuant to Chapter 9
10 (commencing with Section 7000) of Division 3 of the Business and
11 Professions Code, if ~~(1) the~~ *all of the following apply*:

12 (1) The contract price is less than one hundred dollars (\$100);
13 ~~(2) the~~.

14 (2) The negotiation between the parties was initiated by the
15 prospective buyer, ~~and (3) the~~.

16 (3) The contract contains a written and dated statement signed
17 by the prospective buyer stating that the negotiation between the
18 parties was initiated by the prospective buyer.

19 (b) “Appropriate trade ~~premises,~~” *premises*” means premises
20 where either the owner or seller normally carries on a business, or
21 where goods are normally offered or exposed for sale in the course
22 of a business carried on at those premises.

23 (c) “Goods” means tangible chattels bought for use primarily
24 for personal, family, or household purposes, including certificates
25 or coupons exchangeable for these goods, and including goods
26 that, at the time of the sale or subsequently, are to be so affixed to
27 real property as to become a part of the real property whether or
28 not severable therefrom, but does not include any vehicle required
29 to be registered under the Vehicle Code, nor any goods sold with
30 this vehicle if sold under a contract governed by Section 2982, and
31 does not include any mobilehome, as defined in Section 18008 of
32 the Health and Safety Code, nor any goods sold with this
33 mobilehome if either are sold under a contract subject to Section
34 18036.5 of the Health and Safety Code.

35 (d) “Services” means work, labor and services, including, but
36 not limited to, services furnished in connection with the repair,
37 restoration, alteration, or improvement of residential premises, or
38 services furnished in connection with the sale or repair of goods
39 as defined in Section 1802.1, and courses of instruction, regardless
40 of the purpose for which they are taken, but does not include the

services of attorneys, real estate brokers and salesmen, securities dealers or investment counselors, physicians, optometrists, or dentists, nor financial services offered by banks, savings institutions, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, or commercial finance lenders, organized pursuant to state or federal law, that are not connected with the sale of goods or services, as defined herein, nor the sale of insurance that is not connected with the sale of goods or services as defined herein, nor services in connection with the sale or installation of mobilehomes or of goods sold with a mobilehome if either are sold or installed under a contract subject to Section 18036.5 of the Health and Safety Code, nor services for which the tariffs, rates, charges, costs, or expenses, including in each instance the time sale price, is required by law to be filed with and approved by the federal government or any official, department, division, commission, or agency of the United States or of the state.

(e) “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

(f) *Nothing within the meaning of any definition in this section applies to any contract or offer to purchase a time-share estate or time-share use in a time-share project, as defined in Section 11003.5 of the Business and Professions Code, if the time-share project consists of 12 or more time-share estates or time-share uses, is or will be improved with structural dwelling places, and the time-share estates or uses have terms of five years or more, nor to any contract or offer to purchase a good or service that is an exchange program or an incidental benefit, as defined in Section 11003.5 of the Business and Professions Code.*

SEC. 6. Section 1689.24 of the Civil Code is amended to read: 1689.24. As used in Sections 1689.20 to 1689.23, inclusive:

(a) “Seminar sales solicitation contract or offer” means any contract, whether single or multiple, or any offer which is subject to approval, for the sale, lease, or rental of goods or services or both, made using selling techniques in a seminar setting in an amount of twenty-five dollars (\$25) or more, including any interest or service charges. “Seminar sales solicitation contract”

1 does not include any contract under which the buyer has the right
2 to rescind pursuant to Title 1, Chapter 2, Section 125 of the Federal
3 Consumer Credit Protection Act (P.L. 90-321) and the regulations
4 promulgated pursuant thereto or any contract which contains a
5 written and dated statement signed by the prospective buyer
6 stating that the negotiation between the parties was initiated by the
7 prospective buyer.

8 (b) “Seminar setting” means premises other than the residence
9 of the buyer.

10 (c) “Goods” means tangible chattels bought for use primarily
11 for personal, family, or household purposes, including certificates
12 or coupons exchangeable for these goods, and including goods
13 which, at the time of the sale or subsequently, are to be so affixed
14 to real property as to become a part of the real property whether
15 or not severable therefrom, but does not include any vehicle
16 required to be registered under the Vehicle Code, nor any goods
17 sold with a vehicle if sold under a contract governed by Section
18 2982, and does not include any mobilehome, as defined in Section
19 18008 of the Health and Safety Code, nor any goods sold with a
20 mobilehome if either are sold under a contract subject to Section
21 18036.5 of the Health and Safety Code.

22 (d) “Services” means work, labor and services, including, but
23 not limited to, services furnished in connection with the repair,
24 alteration, or improvement of residential premises, or services
25 furnished in connection with the sale or repair of goods as defined
26 in Section 1802.1, and courses of instruction, regardless of the
27 purpose for which they are taken, but does not include the services
28 of attorneys, real estate brokers and salesmen, securities dealers or
29 investment counselors, physicians, optometrists, or dentists, nor
30 financial services offered by banks, savings institutions, credit
31 unions, industrial loan companies, personal property brokers,
32 consumer finance lenders, or commercial finance lenders,
33 organized pursuant to state or federal law, which are not connected
34 with the sale of goods or services, as defined herein, nor the sale
35 of insurance which is not connected with the sale of goods or
36 services as defined herein, nor services in connection with the sale
37 or installation of mobilehomes or of goods sold with a mobilehome
38 if either are sold or installed under a contract subject to Section
39 18036.5 of the Health and Safety Code, nor services for which the
40 tariffs, rates, charges, costs, or expenses, including in each



1 instance the time sale price, is required by law to be filed with and
2 approved by the federal government or any official, department,
3 division, commission, or agency of the United States or of the State
4 of California.

5 (e) “Business day” means any calendar day except Sunday, or
6 the following business holidays: New Year’s Day, Washington’s
7 Birthday, Memorial Day, Independence Day, Labor Day,
8 Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas
9 Day.

10 (f) *Nothing within the meaning of any definition in this section*
11 *applies to any contract or offer to purchase a time-share estate or*
12 *time-share use in a time-share project, as defined in Section*
13 *11003.5 of the Business and Professions Code, if the time-share*
14 *project consists of 12 or more time-share estates or time-share*
15 *uses, is or will be improved with structural dwelling places, and the*
16 *time-share estates or uses have terms of five years or more, nor to*
17 *any contract or offer to purchase a good or service that is an*
18 *exchange program or an incidental benefit, as defined in Section*
19 *11003.5 of the Business and Professions Code.*

